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**UTAH LABOR COMMISSION**

**RANDY BOOTH,**

**Petitioner,**

**vs.**

**UTAH RETIREMENT SYSTEMS and  
WORKERS COMPENSATION FUND,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 05-0255**

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Randy Booth asks the Utah Labor Commission to review Administrative Law Judge Sessions' denial of benefits to Mr. Booth under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Booth claims workers' compensation benefits from Utah Retirement Systems and its insurance carrier, Workers' Compensation Fund, (hereafter referred to jointly as "URS") for a work injury to his back that occurred on October 20, 2004. Judge Sessions held an evidentiary hearing and then referred the medical aspects of the case to a medical panel due to conflicting medical opinions. After reviewing the panel's report, Judge Sessions denied Mr. Booth benefits, finding that Mr. Booth had a preexisting condition that warranted application of the higher standard for legal causation, which was not met.

In his motion for review, Mr. Booth contends there was no medical evidence showing he had a preexisting condition that contributed to his back condition and therefore it was error to apply the more stringent test for legal causation.

**FINDINGS OF FACT**

The following facts are relevant to the issues in the motion for review:

Mr. Booth reports that he was injured playing basketball in high school after another player landed on his right hip; however, he never sought medical treatment for the injury, recovering on his own in time. Mr. Booth hurt his back again in the early 1990's and received physical therapy. Over the years, Mr. Booth concedes that he has injured his back a few times but never had to seek medical treatment, as the pain would resolve within two to three weeks.

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On October 15, 2004, Mr. Booth again injured his back playing basketball but did not seek medical treatment, assuming that it would resolve itself over time. Then, while at work on October 20, 2004, Mr. Booth reached across his desk and lifted a five pound briefcase onto the desk. As he began going through the briefcase, he felt a sudden pain in his lower back. Mr. Booth tried lying on the office floor for about 15 minutes and then tried walking it off for another 15 minutes before having to leave for the day. Dr. Schauers saw him that same day and noted that Mr. Booth's pain started during a basketball game on October 15<sup>th</sup> and he started to feel better until the previous night and that day. Dr. Schauers diagnosed low back strain with muscle spasm.

After reviewing an MRI, Dr. Rich, a neurosurgeon, assessed a right L2-3 disk herniation with a fragment migrating up and performed a microdiscectomy. Dr. Rich found it was medically probable that the October 20, 2004, work accident caused Mr. Booth's herniated disk. At URS's request, Dr. Marble examined Mr. Booth and found that Mr. Booth's back condition was not caused by the work accident of October 20, 2004. He found, instead, that Mr. Booth initially injured his lumbar spine playing basketball in high school and subsequently experienced aggravations to his injury over the years. In his opinion, Mr. Booth again aggravated his preexisting back condition playing basketball on October 15<sup>th</sup>, and that it was during the basketball game that Mr. Booth herniated his disc—not reaching at work.

Dr. Goldman, the neurologist who comprised the medical panel, examined Mr. Booth and reviewed the medical record. Dr. Goldman found that Mr. Booth herniated his disk in the October 20, 2004, work accident, but indicated Mr. Booth had a preexisting back condition that contributed to the injury. The panel report stated:

... It is, therefore, my opinion that the probable musculoskeletal injury that occurred during the basketball game and apparently which had also happened to Mr. Booth several times since his high school days “set up” a weakening situation in his spine which then was “primed” for the disc extrusion of the L2-3 intravertebral disc which occurred with the twisting/leaning over movement on October 20, 2004. It is well known in the medical literature that even minor movements or activity can extrude an injured Intravertebral disc.

**DISCUSSION AND CONCLUSION OF LAW**

The threshold issue before the Commission is whether Mr. Booth had a preexisting medical condition that contributed to his back condition, thereby requiring application of the more stringent test for legal causation. Section 34A -2-401 of the Utah Workers' Compensation Act provides benefits to employees injured by accident “arising out of and in the course of” employment. The Utah Supreme Court has held that an injury “arises out of” employment when the work-related event or exertion is both the “legal cause” and the “medical cause” of the injury. See Allen v. Industrial Commission, 729 P.2d 15, 26 (Utah 1986).

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The Allen decision established alternate tests for legal causation, depending on whether the injured worker suffered from a preexisting condition that contributed to his work injury. These alternate tests were further described by the Utah Supreme Court in Price River Coal Co. v. Industrial Commission, 731 P.2d 1079, 1082 (Utah 1986), as follows:

Under Allen, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the "usual wear and tear and exertions of nonemployment life." (Citations omitted.)

However, not every pre-existing condition will trigger application of the more stringent "unusual or extraordinary exertion" test for legal causation. As the Utah Court of Appeals stated in Nyrehn v. Industrial Commission, 800 P. 2d 300, 334 (Utah App. 1990):

[The Commission] may not simply presume that the finding of a preexisting condition warrants application of the Allen test. **An employer must prove medically** that the claimant "suffers from a preexisting condition which **contributes** to the injury." (Citations omitted; emphasis added.)

The Commission has reviewed the evidentiary record, including the opinions of Mr. Booth's treating physicians, URS's medical consultant, Dr. Marble, and the medical panel. The Commission notes Mr. Booth's argument that there is no medical evidence showing he had a preexisting back condition. However, Mr. Booth reported suffering back injuries over the course of many years and although no diagnostic tests are available, the panel was able to state with reasonable medical probability that Mr. Booth's previous injuries were evidence of a preexisting condition that contributed to his back condition.

The Commission finds the impartial panel's opinion persuasive and supported by the record, which includes Mr. Booth's own testimony regarding his history of back problems. The Commission finds Mr. Booth had a preexisting back condition that contributed to his work injury, thereby requiring application of the more stringent test for legal causation. Because Mr. Booth's work activity of reaching over his desk and lifting a five pound briefcase would not rise to the level of unusual or extraordinary exertion, the Commission affirms Judge Session's conclusion that legal causation was not proven and denial of benefits.

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**ORDER**

The Commission affirms Judge Sessions' decision dismissing Mr. Booth's claim for benefits. It is so ordered.

Dated this 28<sup>th</sup> day of January, 2009.

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Sherrie Hayashi  
Utah Labor Commissioner

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.